In re:		Bky. No. 04-44774 (RJK)
Susan M. Mitchell,		Chapter 7 Case
	Debtor.	

#### NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3.

- 1. M&I Bank FSB ("Movant") hereby gives notice that a hearing on its Motion for Relief from Stay will be held at 2:00 p.m. on November 4, 2004 in Courtroom No. 8 West, at the U.S. Bankruptcy Court, U.S. Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.
- 2. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 26, 2004, which is seven (7) days before the time set for hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 3. Movant brings this motion pursuant to 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9019-1. This proceeding involves certain real property of Debtor which is subject to a mortgage lien held by Movant (the "Property"). The Property is located in Renville County, Minnesota, and is more fully described as:

West 110 feet of Lots 2 and 3, and the North 15 feet of the West 110 feet of Lot 6, Block 8, Original Plat of the City of Renville, Renville County, Minnesota.

Movant requests relief from the automatic stay to foreclose its mortgage lien on the Property.

- 4. The Court has authority to hear and finally determine this motion pursuant to 28 U.S.C. §§ 1334 and 157, 11 U.S.C. § 362(d), and Bankruptcy Rule 5005 and Local Rule 1070-1. The determination of this motion constitutes a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(G). The petition commencing this Chapter 7 case was filed on August 25, 2004. Debtor's case is now pending in the Court.
- 5. On or about September 20, 2002, Susan M. Mitchell, a single person, executed a certain Mortgage Note and Mortgage Deed covering the Property in favor of M&I Bank FSB. Copies of the Mortgage Note and Mortgage Deed, together with evidence of recording, are attached.
- 6. Debtor is in default on the mortgage as of September 27, 2004 for four monthly payments for June through September 2004, motion costs and late charges, in the total amount of \$2,370.85. This default will increase to \$2,395.85 on October 10, 2004, when another late charge becomes due. Neither the Chapter 7 Trustee nor the Debtor has made any post-petition payments on the mortgage loan with Movant.
  - 7. The total indebtedness to Movant, as of September 17, 2004, is as follows:

Principal:	\$48,009.08
Interest (to 9/17/04):	1,165.88
Late Charges:	75.00
Costs:	230.50
Motion Costs:	875.00
TOTAL	\$ 50,355.46

- 8. Interest continues to accrue on the indebtedness at a per diem rate of \$8.51.
- 9. With respect to property of Debtor or the estate, 11 U.S.C. § 362(d)(2) provides that the Court may terminate or modify the automatic stay if:

(a) The debtor does not have an equity in such property; and

(b) Such property is not necessary to an effective reorganization.

10. Movant requests that the Court grant relief pursuant to 11 U.S.C. § 362(d)(2). Debtor

has little or no equity in the Property. Debtor listed the market value of the Property in her schedules as

\$50,000.00. The indebtedness to Movant currently exceeds Debtor's estimated market value of the

Property. Taking into account usual selling expenses of 10% of the selling price, Debtor has no equity

in the Property. Debtor's lack of equity in the Property constitutes reason to lift the stay pursuant to

11 U.S.C. § 362(d)(2).

11. Movant requests that any order modifying the automatic stay be effective immediately as

allowed under Federal Bankruptcy Rule 4001(a)(3).

12. Movant also requests the Court grant relief pursuant to 11 U.S.C. § 362(d)(1) for

cause. Movant is not adequately protected. There is no equity cushion in the Property and neither

Debtor nor the Trustee have made any offer of adequate protection.

WHEREFORE, Movant, by its undersigned attorneys, requests relief from the automatic stay

provided by 11 U.S.C. § 362(a) for itself and its successors and assignees to foreclose its mortgage lien

on the Property, and for such other relief as may be just and equitable.

Dated: September 27, 2004.

**BEST & FLANAGAN LLP** 

By /e/ Patrick B. Hennessy

Patrick B. Hennessy

Atty. Registration No. 124412

Attorneys for M&I Bank FSB

225 South Sixth Street, Suite 4000

Minneapolis, MN 55402-4690

(612) 339-7121

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In re:

Bky. No. 04-44774 (RJK)

Susan M. Mitchell,

Chapter 7 Case

Debtor.

### UNSWORN VERIFICATION AND DECLARATION REGARDING ELECTRONIC FILING

Fran Jefferson declares under penalty of perjury under the laws of the United States that:

- 1. I am the bankruptcy specialist for M&I Bank FSB, ("Movant") and I have been duly authorized by it to verify Movant's Motion for Relief from Stay dated September 27, 2004, (the "Motion") to be filed in the above captioned bankruptcy case.
- 2. I have read the Motion, know its contents, and state that the same are true and correct to the best of my knowledge, information and belief.
- 3. I understand that our attorney will scan this Verification and save it in a PDF format to be inserted into the electronic submission of this motion.
- 4. I consent to the Motion being filed electronically by our attorney with the Clerk of the United States Bankruptcy Court, and that Movant's attorney, Best & Flanagan LLP, will retain the original in its file\*.

Dated

Fran Jefferson

Bankruptcy Specialist

\* Best & Flanagan LLP will retain the original of this unsworn declaration in its file for 2 years.

#### NOTE

September 20, 2002

RENVILLS

(State)

323 2ND STREET NORTHWEST [Property Address]

#### 1. RORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 50,000.00 "principal"), plus interest, to the order of the Lender. The Lender is MAI BANK FEB

(this amount is called

that the Lander may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

#### 2. INTEREST

Interest will be charged on principal until the full unount of principal has been paid. I will pay interest at a yearly of 6.470 %. This Interest rate is the rate I will pay before the maturity of this Note.

After the maturity of this Note (whether by acceleration or lapse of time), I will pay interest on unpaid principal and rate of

interest at a yearly rate of 6.470 %

#### 3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month beginning on October 25, 2002 , which is called and continuing on the same day of each month thereafter utitil September 28, 2017 the "maturity date." If, on the maturity date, I still owe amounts under this Note, I will pay those amounts in full on that date regardless of the amounts. The Note Holder has no obligation to refinance the payment due on the maturity date. My payments will be applied in such order as Lender elects to charges and amounts due under this Note.

I will make my monthly payment at P.O. BOX 341

MILWAUKEE, WI 53201-0341 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. 5 372.35

#### BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they become due. A payment of principal only is known as a "prepayment". When I make a propayment, I will tell the Note Holder in writing that I am doing so. The Note Holder will use partial prepayments to reduce the amount of principal that I owe. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing

[X ] If I prepay this Note throng the first 12, 24 or 35 months, I agree to pay a prepayment for of 3%, 2% or 1%, respectively, of the initial principal amount of this Note unless the prepayment is made in connection with a sale of the property securing this Note or is prohibited by law.

#### LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

#### (A) Late Charge for Overdue Payments and Return Check Charge

If the Note Holder has not received the full amount of any mouthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5 % of the unpoid whichever is greater. I will pay this less charge promptly but only once on each late amount [ X ] or \$ 25.00 payment. I agree to pay a charge of \$ 15.00 for each check presented for payment under this Note which is returned unsatisfied.

#### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

#### (C) Notice of Default

If I am in default, the Note Holder may sand me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require use to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the nodice is delivered or mailed to rue.

#### (D) No Walver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

#### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable accorneys' fees.

#### 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different

#### 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, curety or endomer of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Unless a lien would be prohibited by law or would rander a nominisable account taxable, I grant to Lender a security interest and lien in any deposit account I may at any time have with Lender.

#### 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presenument" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" rucans the right to require the Note Holder to give notice to other persons that amounts due have not been paid. 10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as fullows:

Transfer of the Property or a Beneficial laterest in Borrower. If all or any part of the Property or any interest

in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by London if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums accurred by this Security Instrument. If Borrower falls to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower. 11. INTERPRETATION

Lender is a federal savings bank with its charter ineated in the state of Nevada. The validity, construction and enforcement of this Note are governed by applicable federal law and Novada law. Conduct, action or proceedings to recover any collateral or foreclose on any property may be governed by the state in which the collateral or property is located.

ITNESS THE HAND(S) A	ND SEALS) OF THE UNDERSIGNED.	<b></b>
	SUSAN MITCHELL	(Scal)
		(Scal)
		-Borrowe
		(Seal)
. <b>t</b>		-Велоче
		(Seal)
		-Воггечо

(Sign original Caly)

Registration Tax Mercun of \$ \_\_ dacai.i Countersigned, and Paymen 25279364-70784

DOC# A 322523 Certified, Filed and or Recorded an DCT. 03,2002 AT 10:00AM

Hait m meller

BAIL N. MILLER OFFICE OF COUNTY RECORDER RENVILLE COUNTY, MINNESOTA Fee Allount: 120,00 CARROLL DA CAR ELECTRICA DE LA MARIE DA MARIE

- 36-00	<b>950-00</b>
DOCUMENT NO.  REAL ESTATE MORTGAGE BUSAN K MITCHELL, A SINGLE PERSON	Parcol Identifier No. 2 - 83 8 95
whether one or more) mortgages, conveys and warrants to MEI BANE FSB	('Lender'
in consideration of the sum of ***FIFTY TROUSAND DOLLARS AND ZERO CENTS**	
	Dollars (\$ 50,500,50)
loaned or to be loaned to SUSAN M MITCHELL	
(Borrower, whether one or more), evidenced by Borrower's note(s) or agreement dated 09/20 are acceptual research. If not paid acriler, the real sature described below, together with appurtonances, all rents, loses, iscues and profile, all claims, wards and payments made as a result and all existing and future improvements and flictures (si) colled the "Property" to secure the Chilipal but not limited to the repayment of the sum stated above plue certain future advances much by Lander pursuant to Peregraph 4 below, consilitutes the "initial amounts advanced by Lander pursuant to Peregraph 4 below, consilitutes the "initial amount of the deb	in eifernesse, sheinzilożnie, segolikiej lis niżemob tendina to high sci to eslożeke est to. nibutoni, woled & dengaracjini pastropa snot gra to eviguloke, swoza betsta mus est.
Description of Property. (This Property (is) (SPREEF the homestend of Mortgagor.) This Property County, Minnesons.	/ Is located in EXEVILLE
WEST 110 FEET OF LCTS 2 AND 3, AND THE NORTH 15 FEET OF THE W 8, ORIGINAL PLAT OF THE CITY OF RENVILLE, RENVILLE COUNTY, MI	MEST 110 PERT OF LOT 6, BLOCK NNTSOTA.
36-00851.10	
	- W1

| If chacked here, Condominum Rider is attached.
| If chacked here, this Marigage secures a revolving line of credit under which advances, payments and resdivances may be made from time to time, and the principal amount of the revolving line secured by this Mortgage at any oce time shall not exceed the sum stated above.
2. Titles, Mortgage wereast, title to the Property, excepting only restrictions and easements of record, municipal and coning ordinances, durrent taxes and essessments not yet due and NONE. 3. Econow. Interest (militarest) be paid on secrowed funds if an econow is required under paragraph 6(a) of this Montgage.

if checked hare, description continues or appears on attached sheet. if checked here, this Mortgage is a purchase money mortgage.

it ohecked here, this Mortgage is a "construction mortgage" under M.S.A. § 338.9-919(1)(C).

If checked here, Condominium Rider is attached.

A mortgage se Security. This Mortgage secures prompt payment to Lander of (a) the sum sisted in the list paragraph of this Mortgage.

A Mortgage se Security. This Mortgage secures prompt payment to Lander of (a) the sum sisted in the list paragraph of this Mortgage, blue interest and charges according to the terms of the promissory notes or agreement of accorder to Lander destinated shows, and any externations, remeated on modifications as and any externations, remeated of the control of the security of the control of the con

performed.

5. Tareas. To the extent not pold to Lander under paragraph 8(e), Mongagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property or against Lender upon this Montage, upon Lender is in the Property, and deliver to Lender receipts showing timely payment.

8. Authority of Lander to Perform for Montager, it Montager, it Montager falls no perform any of Montagers author set to perform any after pring Montager any notice and opportunity to perform which are required by law, perform the duties or cause them to be performed, including without limitation eighting Montagers in arms or paying any amount so required, and the cest shall be due on demand and secured by the Montage, being indicate at the Apriless rate support and opportunity and opportunity of experts and the cest shall be due to the maximum rate permitted by law, from the date of expenditure by Lander to the date of payment by Montager.

7. Insurance, Montager half layers the Insurance manufacture that Property insured appliest direct loss or demand once occasioned by the shortest.

date of expenditure by Lander to the date of payment by Mortgagor.

7. In surrance. Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fits, flood, extended coverage parts and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without consumnoe, not loss than the unpud between the Chilications or the full replacement value, whichever is leaf, and thail pay the premiums when due, the policies shall consist the asterdard mentages causes in favor of Lender and, unless Lender otherwise agress in which, the property shall be deposited with Lender, Subject to Lender's approved. Borrower is free to select the lenderneer of the full replacement of the Property shall be deposited with Lender, Subject to Lender's approved. Borrower is free to select the lenderneer and insurance exhall be applied, at Lender's option, to the installments of the Obligations in the invaries order of the mountage (without penalty for prepayment) or to the reading of the control of the installments of the Obligations in the invaries order of the mountage (without penalty for prepayment) or to the reading of the internet of the control of the property. In extinguishment of the indistrictions accounted hereby, all right, dids, and inferred of Mortgagor in unique or the reading of the purchaser or grants. If Mortgagor is to keep any required insurance on the Property, Lender may be acquired to the internet of Lender (it will not cover Mortgagor's sqully in the Property), and Mortgagor a obligation to repay Lender entitle in accordance with Peragraph 6.

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- 8. Mortgagor's Covenants. Mortgagor covenants:

  (a) Escrew: if an eacrow is required by Lander, to pay Lander sufficient funds, at such times at Funder designation, to pay which due (1) the estimated annual real arisis taxes and assessments on the Property. [2] all property and pazari insurance, premiums, (6) If payments owed under the Collegations are grant and pazari insurance, premiums, required by mortgage, suffamily insurance, premiums, recovering to pay for such interviews, and (5) other items agreed to be included in the parget. Index, may, attached, the premiums necessary to pay for such interviews, and (5) other items agreed to be included in the parget. Index, may, attached, the premiums are required to the parget of the part of t
- due, Lender may notify Mortgager in writing, and Mortgagor shall pay to Lander the amount necessary to make up the deficiency in a marmer determined by Lander or as otherwise required by applicable law;

  (b) Cendition and Repair. To leap the Property in good and tenambable condition and repair, and to receive or repisce damaged or destroyed improvements and fixtures;

  (c) Cendition and Repair. To leap the Property in good and tenambable condition and repair, and to receive or repisce damaged or destroyed improvements and fixtures;

  (d) Lieris. To keep the Property free firm liens and encumbrances superior to the lian of this Mortgage and not described in paragraph 2 of this Mortgage;

  (d) Other Mortgages, To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;

  (e) Wasel, Not to commit waste or permit waste to be committed upon the Property.

  (f) Conveyance, Not to sell, seeign, lease, mortgage, convey or otherwise transfer any legal or equilable interest in all or pain of the Property, or pornit the same to occur without one content of the Property, or pornit the same to occur without one of the Conveyance. Not to sell, seeign, lease, mortgage, convey or otherwise it lender any legal or equilable interest in all or pain of the Property, or pornit the same to occur without one of the conveyance with any transfers as to his interest in the same manner as with Mortgagor, without notice to Mortgagor. Lender may deal with any transfers as to his interest in the same manner as with Mortgagor, without notice to Mortgagor in the Collegations;

  (d) Afternion or Removal, Not to remove, demolish or materially eiter any part of the Property, without Lender's prior written consent;

  (e) Anternion or Removal, Not to remove, demolish or materially eiter any part of the Property, without lease equal writing;

  (f) Condemnation, to pay remove a fixture, provided the likeure is promptly replaced

- the note(a) or agraement identified on the first page of this Mortgage.

  9. Environmental Laws. Mortgager represents, watrants and doverantle to Lender (a) that during the paritod of Mortgager's ownership or use of the Property no euclastence has been, it or will be present, used, stored, desponent, treated, recycled or disposed of on, under, in or about the Property on euclastence has been, it or will be present, used, stored, desponent, treated, recycled or disposed of on, under, in or about the Property would require clean-up, removal or some that retained action. (Hazardous Substance) under any federal, state or local laws, regulations, ordinances, codes or rules (Environmental Laws); (b) that Mortgager has no knowledge, after due supplied, of any prior owner of or person using the Property company, of any prior use or existence of any hazardous Substance, and in the Property prior owner of or person using the Property company in the past has been, at the present of the Mortgager which would specify the greater of the substance; (a) that Mortgager is not subject to any sound or administrative proceeding, judgment, decree, order or chain to taking to any Hazardous Substance; and (if that Mortgager in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws, Mortgager and indemnity and hold harmless before, the office of property or substance or under the property company in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws, Mortgager and legal expension, labeling and change what substances and (if that Mortgager in the past has been, at the present, officer, amplitude of variations of the property of the substance of the prope
- 10. Default, Acceleration; Remedies, Subject to paragraph 11. If (a) there is a default under any Obligation sequend by this Mortgage, or (b) Mortgagor falls timely to observe or perform any of Mortgagor's covenants or duries obtained in this Mortgage, then, at the option of Lenters such Obligation will become immediately personal personal before the Redigagor or Romoward and opportunity to dure at required by the document evidencing the Obligation and, in that event, the Obligation will become indexed the cover as provided in the document evidencing the Obligation or as a theretoe provided by the It Lender exercises its option to accessing, the unpaid principal and interest leved on the Obligation, together with all sums paid by Lander as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by tereclosure of this Mortgage by advertisement or carbon, or both, or by the exercise of any other resmot available at law or equity, and the Lander shall have the stallutory power of sale, and on foreclosure the Lander may retain statisticny costs and attorneys' fees.
- 11, Defeyit, Acceleration, Remedies for Loans Loss than \$100,000. It Serrewer is a natural paraon and the original principal amount of the Obligations is less than \$100,000, and if (a) there is a default under any Obligation secured by this Mertigage, or (b) Serrower or Mortgagor falls ilmely to observe or perform any of Mortgagor's covenants or duties combined in this Mortgago, other than the duty to not sell the Property without Lander's pion written compant, then Cender, pior to foredosure, shall give notice to Serrower by certified mail to the address of the Property without bender address as Berrower may designate in mriting to Lender, specifying: (1) the action required to cure such default; (3) and the compant of the serrower of the cure such default on or before the date sense death on address of the property. The notice shall further inform Borrower of the right to relinate after acceleration and the flort bands acceleration destinates after acceleration and the flort bands accelerated action to search the noncistance of addition of any other defense of Serrower to acceleration and asset, if the default is not our and payable without three foreign and and of the property. The nower to acceleration and asset, if the default is not our and on or before the date specified in the notice, Lander, at Lander's option, may declare all of the sum's secured by this Mortgagor without further demand and may invoke the power of such hearth of the default or manufactured on or before the date specified in the notice, Lander's option, may declare all of the sum's secured by this Mortgagor to selling the Property without the prior consent of Lander, then the prior consent of Lander, t
  - 12. Walver, Lender may waive any default without waiving any other subsequent or prior default by Merigagos.
- 13. Power of Sale. In the event of (preciosure, by aution or advantaement, Lender may sell the Property at public sale pursuant to Minnasota statute.
- 14. Assignment of Renta and Leases. To the extent not prohibited by law, Mortgagor assigns and transfers to Lander, as additional security for the Chilgations, all rents which become or remain due or are paid under any agreement or lease to the use or opagancy of any part or all of the Property. Until the occurrence of an event of dataful under this Mortgagor as May Chilgation, Mortgagor has the right to older the rents, besues and profile from the Property, but upon the occurrence of such any event at dataful, and the giving of notice by Lander to Mortgagor of Lender's intent to commence collection of the tents, issues and profile from the Property, Mortgagor in Richmost Coeffect is turnificated and Lender shift be applied the such rents; Issues and profits and may after glying Mortgagor any notice and appartunity to partorm required by law, notify any or all fanances to pay as suen rents directly to Lender, All such payments shall be applied first as provided in MSA, \$676.7 auchiritation 2, as amended or renumbered from their to time, and then in such manner as Lender determines to payments required under this Mortgage and the Obligations. Mortgagor may collect all rants, leaves and profile from the Property for the entire reclamption period many foredocure sales. This adaignment shall be arthorized to lake any extent process the adaption period from the tentants to pay disprets the Lender shall be entitled to lake any extent process the adaption period from the tentants to pay disprets to Lender or the commencement of a foreologue aution) without seeking or obtaining the application or a reconstruction of the Property.
- 13. Receiver, Upon the commencement or during the pendency of an action to foreclose this Mortgage either by action or advertisement, or entorce any other remedies of Lander under it, without regard to the waste, adequacy or inadequacy of the Property set security for the Obligations or solvency of the Mortgagor, Mortgagor ways, in its discretion, request that a court, appoint a receiver of the Property finducing homestess interests) and it is projected. Mortgagor agrees that this court shall point a receiver of the Property (including homestess) and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and supervision powers as the court may grant until the expiration of any redemption period, and may order the rents, issues and profits, when so collected, to the held and applied as the court may direct.
- 16. Voluntary Foreologure. Mongagor agrees to the provisions of M.S.A. § 582.32, as the same may be amended or renumbered from time to time, permitting bandar, at its option, upon watwing the right to judgment for deficiency, to start to hold a voluntary foreclosure sate of the Property. At Lender's request, Mongagor shall enter into a written agreement for voluntary foreclosure as provided in M.S.A. § 582.32.

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. 17. Expenses. To the extent not prohibited by law. Mortpagor shall pay as readinable costs and expenses incurred by Lander in protecting or enforcing its rights under this Montgage whether incurred before or after judgment or pursuant to any fereclosure proceeding including, without limitation, attorneys less, tess and expenses for environmental assessments, inspections and evolts, and fees and expenses for obtaining title evidence.

 $(x_1, \dots, x_n) = (x_1, \dots, x_n) = (x_1, \dots, x_n)$ 

- 18, Severability; Governing Law, invalidity or unentoreability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision. The validity, construction and enforcement of this Mortgage are governed by the laws of Minnesota.
- 19. Buscassors and Assigns. The obligations of all Montgagors are joint and several. This Montgage benefits Lender, its successors and assigns, and bintic Montgagor(s) and their respective helps, personal representatives, successors and eatigns.
- 20. Enthe Agreement, This Mortgage is intended by the Mortgager and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its forms, there being no conditions to the full effectiveness of this Mortgage. No paral exidence of any nature shall be used to supplement or modify any terms.
- 21. Copies. The Lander agreed to give the Mortgager a conformed copy of all promissory notes and this Mortgage when they are aligned or within a recognishs time after this Mortgage is recorded.

he Mortgager acknowledges receipt of an exect copy of this Mort	gage. Signed and Sealed Saptember 20, 2002
	(SEAL) SUSAN MATCHELL (
(Type of Organization)	
у:	(SEAL)
y:	_(SEAL)
y:	_(SEAL)
r	(SEAL)
TATE OF MINNESUTA	(NOWLEDGEMENT
county of RPAULLAE	
(Type of authority; s.g., officer, trustes, etc., " erry)	Name of certy on behalf of shoot instrument and analysis of any)
under the later of	
VIII OF THE COLUMN	
his instrument was drafted by: (Name and Address)	
CLECL PRINCEN	Notary Public,
PO NOX 8820	My Commission (Supires) (la)
	Ned TAL MAY BANK POR
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(	1 2005 1 September 1-31-2005

Foundation Title, LLC 5701 Shingle Creek Parkway Spine 520 Brooklyn Center, MN 55430 .....

In re:	Bky. No. 04-44774 (RJK)

Susan M. Mitchell, Chapter 7 Case

Debtor.

#### **MEMORANDUM OF LAW**

M&I Bank FSB ("Movant") has moved for relief from the stay provided by 11 U.S.C. § 362(a) with respect to property of the estate of Debtor as described in the motion. The facts are set forth in the motion. Movant requests relief under both 11 U.S.C. § 362(d)(2) and § 362(d)(1).

- 1. With respect to property of Debtor or the estate, 11 U.S.C. § 362(d)(2) provides that the Court may terminate or modify the automatic stay if:
  - (a) The debtor does not have an equity in such property; and
  - (b) Such property is not necessary to an effective reorganization.

As the term is used in § 362(d)(2)(A), "equity" simply means the difference between the value of the property at issue and the total amount of the liens against it. Stewart v. Gurley, 745 F.2d 1194 (9th Cir. 1984).

2. Movant requests that the Court grant relief pursuant to 11 U.S.C. § 362(d)(2). Debtor has little or no equity in the Property. Debtor listed the market value of the Property in her schedules as \$50,000.00. The indebtedness to Movant currently exceeds Debtor's estimated market value of the Property. Taking into account usual selling expenses of 10% of the selling price, Debtor has no equity

in the Property. Debtor's lack of equity in the Property constitutes reason to lift the stay pursuant to 11 U.S.C. § 362(d)(2).

- 3. Debtor filed for protection under Chapter 7 of the U.S. Bankruptcy Code and the "effective reorganization" provision of § 362(d)(2)(B) does not apply.
- 4. 11 U.S.C. § 362(d)(1) authorizes the Court to grant a creditor relief from the automatic stay for "cause", which includes the "lack of adequate protection of an interest in property of [the creditor]". Movant is not adequately protected as contemplated by 11 U.S.C. § 361. The failure of the Chapter 7 Trustee and Debtor to maintain regular periodic payments to Movant demonstrates their inability to provide adequate protection of Movant's mortgage lien on the property.

Dated: September 27, 2004. BEST & FLANAGAN LLP

By /e/ Patrick B. Hennessy

Patrick B. Hennessy Atty. Registration No. 124412 Attorneys for M&I Bank FSB 225 South Sixth Street, Suite 4000 Minneapolis, MN 55402-4690 (612) 339-7121

In re:	Bky. No. 04-44774 (RJK)

Susan M. Mitchell, Chapter 7 Case

Debtor.

### DECLARATION REGARDING ELECTRONIC FILING AND UNSWORN CERTIFICATE OF SERVICE

I, Kathryn J. Dahl, declare under penalty of perjury that on October 8, 2004, I mailed copies of the Notice of Hearing and Motion, Memorandum of Law, and proposed Order Modifying Automatic Stay of M&I Bank FSB, which documents were electronically filed on October 8, 2004, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

I will scan the original of this Declaration and save it in PDF format and understand it will be inserted into the electronic submission of the motion. I consent to this Declaration being electronically filed with the United States Bankruptcy Court. Best & Flanagan LLP will retain the original of this unsworn declaration in its file for 2 years.

Susan M. Mitchell 323 Second Street NW PO Box 695 Renville, MN 56284

Raymond R. Waechter Waechter & Gustafson 328 5<sup>th</sup> Street SW Willmar, MN 56201 John R. Stoebner, Trustee 120 South 6<sup>th</sup> Street, Suite 2500 Minneapolis, MN 55402

Office of the U.S. Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415

Executed on: October 8, 2004

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Best & Flanagan LLP

225 South Sixth Street, Suite 4000

Minneapolis, MN 55402

	<u> </u>	
In re:	Bky. No. 04-44774 (RJK)	
Susan M. Mitchell,	Chapter 7 Case	
Debtor.		
ORDER MODIF	YING AUTOMATIC STAY	
This matter came before the Court for	hearing on November 4, 2004, on the motion of M&I	
Bank FSB, for relief from the automatic stay to	o foreclose its mortgage lien on certain real property of	
the Debtors ("Property"). The Property is loca	ated in Renville County, Minnesota, and is more fully	
described as follows:		
West 110 feet of Lots 2 and 3, and the Block 8, Original Plat of the City of Re	e North 15 feet of the West 110 feet of Lot 6, enville, Renville County, Minnesota.	
Appearances of counsel were noted o	on the record. Counsel were heard. Based upon the	
verified Motion of movant, supporting Memor	randum, the files and records herein, and arguments of	
counsel:		
IT IS HEREBY ORDERED that the a	automatic stay provided by 11 U.S.C. § 362(a) is	
modified to allow M&I Bank FSB, its successors, and/or its assignees to foreclose its mortgage lien on		
the Property in accordance with the terms of i	ts Mortgage Note and Mortgage Deed and the laws of	
the State of Minnesota. Notwithstanding Fed	.R. Bankr. P. 4001(a)(3), this order is effective	
immediately.		
Dated: November, 2004	Robert J. Kressel	

U.S. Bankruptcy Judge